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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re D.S., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

D.S.,

Defendant and Appellant.

D067269

(Super. Ct. No. J228034)

APPEAL from a judgment of the Superior Court of San Diego County, Aaron H. Katz, Judge. Affirmed in part and disposition vacated in part and remanded with directions.

Amanda Fates, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor and Marvin E. Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

D.S. (the Minor) admitted one count of receiving stolen property (Pen. Code,<sup>1</sup> § 496, subd. (a)) and one count of misdemeanor vandalism (§ 594, subd. (a)(b)(2)(A)). The Minor has also admitted various offenses in other petitions in juvenile court, including one offense for assault by force likely to produce great bodily injury (§ 245, subd. (a)(4)).

While the matter was pending in the juvenile court, the voters enacted Proposition 47 (§ 1170.18). In December 2014, the Minor petitioned the court to reduce the receiving count to a misdemeanor. During this time the San Diego Superior Court was apparently of the view that Proposition 47 did not apply to juveniles. As a result the court did not rule on the petition, but did observe "TERM MAY NEED TO BE REDUCED APPROPRIATELY UNDER PROPOSITION 47."

The Minor's appeal was filed before this court in *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, determined that Proposition 47 does apply to juvenile delinquency proceedings. The Minor argues this court should act to reduce the receiving offense to a misdemeanor. We decline to do so, but will remand the case to the juvenile court with directions to rule on the petition for resentencing.<sup>2</sup>

## DISCUSSION

Proposition 47 provides a mechanism by which persons who received felony sentences for certain wobbler offenses may petition the court to resentence the offenses to misdemeanors where appropriate. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091-

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> The facts of the offenses are not relevant in light of our disposition of the case.

1092.) The parties agree the record seems to indicate that the disposition of the receiving offense should probably be reduced to a misdemeanor and the Minor's maximum time exposure should be reduced. The difficulty presented by this record is that when the juvenile court acted on the petition it was under the mistaken view that Proposition 47 did not apply to juvenile delinquency cases. As we have indicated we have since held the proposition does apply to juveniles and that they are entitled to reduction of felony dispositions where appropriate on the facts. (*Alejandro N. v. Superior Court, supra*, 238 Cal.App.4th at pp. 1216-1217.)

Rather than undertake the dispositional role of the juvenile court we will order the case remanded to the juvenile court with directions to rule on the merits of the petition and to grant such relief as may be appropriate.

#### DISPOSITION

The case is remanded to the juvenile court with directions to rule on the merits of the petition to reduce the disposition of the receiving count (§ 496, subd. (a)), and to grant such relief as may be appropriate. In all other respects the dispositional orders are affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.